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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re RIPPLE LABS INC. LITIGATION,

This Document Relates to:
ALL ACTIONS

Case No. 4:18-cv-06753-PJH

**LEAD PLAINTIFF BRADLEY
SOSTACK'S RESPONSE TO FORIS
DEFENDANTS' MOTION FOR
CLARIFICATION**

Judge: Hon. Phyllis J. Hamilton

1 Lead Plaintiff Bradley Sostack respectfully submits this response to the Foris Defendants’
2 Motion for Clarification (ECF No. 150).

3 On September 3, 2021, Lead Plaintiff and defendants Ripple Labs Inc., XRP II, LLC, and
4 Bradley Garlinghouse filed a joint administrative motion asking the Court to consider whether
5 *Toomey v. Ripple Labs, Inc.*, No. 3:21-cv-06518, should be related to and consolidated with this
6 consolidated case, *In re Ripple Labs Inc. Litigation*, No. 4:18-cv-06753. ECF No. 145. On
7 September 20, 2021, the Court consolidated the *Toomey* action with the *In re Ripple* action for
8 pretrial purposes. ECF No. 149. The Court’s order in the *In re Ripple* action instructed that “any
9 dates for hearing noticed motions are vacated and must be re-noticed by the moving party before
10 the newly assigned judge.” *Id.* And the consolidation order issued in the *Toomey* action explained
11 that, “to the extent that the newly-consolidated action involves legal issues arising only under
12 Florida state law, or involves legal issues relating to defendants that are not named in *In re Ripple*,
13 those issues will not be addressed until the court has resolved the legal issues raised by the earlier-
14 filed action.” *Toomey*, ECF No. 85.

15 The Court’s orders were not ambiguous. Any hearing dates in *Toomey* were vacated, and
16 the Court will not address legal issues arising only under Florida law or legal issues relating to
17 defendants not named in *In re Ripple* (including the Foris Defendants) until the Court has resolved
18 the legal issues raised by *In re Ripple*. In effect, the *Toomey* action is stayed pending resolution
19 of *In re Ripple*.

20 The Foris Defendants’ motion is couched as one for “clarification,” but it is effectively
21 asking the Court to reverse course and address issues relating to the Foris Defendants now despite
22 the Court’s clear instruction that it would address them later. The Court should decline this request
23 because none of the reasons the Foris Defendants present in support are persuasive.

24 *First*, the Foris Defendants claim they will be “unduly prejudiced” by waiting until the
25 legal issues raised by *In re Ripple* are resolved. Mot. at 2. But merely being named as a defendant
26 is not legal prejudice—let alone “undue” prejudice. As the Ninth Circuit has explained, legal
27 prejudice is “prejudice to some legal interest, some legal claim, some legal argument.” *Westlands*
28

1 *Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). “Uncertainty because a dispute
2 remains unresolved is not legal prejudice.” *Id.*

3 *Second*, the Foris Defendants argue that their asserted grounds for dismissal are unique to
4 them. The Fortis Defendants are incorrect. All three issues the Fortis Defendants identify have
5 arisen or may arise in *In re Ripple*. The Foris Defendants’ statute-of-repose defense is the same
6 as that raised by the *In re Ripple* defendants, just with different dates. The Foris Defendants’
7 domestic-transaction argument is not unique either. Although the *In re Ripple* defendants have
8 not raised that issue in this action, Mr. Garlinghouse raised the issue in a motion to dismiss in the
9 SEC enforcement proceeding against the *In re Ripple* defendants pending in the Southern District
10 of New York. *See S.E.C. v. Ripple Labs Inc.*, No. 20-cv-10832-AT-SN, ECF No. 111 at 20–29
11 (Mem. of Law in Support of Def. Bradley Garlinghouse’s Mot. to Dismiss). The statutory-seller
12 issue also is not unique to the Foris Defendants. As they admit, who is and who is not a statutory
13 seller has already been briefed and addressed by this Court. *See Order Granting in Part and*
14 *Denying in Part Defs.’ Mot. to Dismiss* at 21–22, ECF No. 85.

15 In sum, the Foris Defendants’ purported grounds for dismissal are not unique to the *Toomey*
16 action. But even if these issues were unique to them, permitting the Foris Defendants to engage
17 in motion practice at this stage of the proceedings would needlessly complicate the prosecution
18 and defense of *In re Ripple*, potentially resulting in duplication, and needless expense and effort.
19 The *Toomey* plaintiffs are members of the putative class in *In re Ripple*, no parties have objected
20 to consolidation, and it is the Court-appointed Lead Plaintiff, not the *Toomey* plaintiffs, that is
21 “empowered to control the management of the litigation as a whole.” *In re Bank of Am. Corp.*
22 *Securities, Derivative & ERISA Litig.*, 2010 WL 1438780, at *2 (S.D.N.Y. Apr. 9, 2010). The
23 PSLRA calls for appointing a lead plaintiff to avoid precisely this sort of duplication of effort and
24 confusion caused by later-filed complaints. *See McIntire v. Mariano*, 2019 WL 78982, at *6 (S.D.
25 Fla. Jan. 2, 2019).

26 *Third*, the Foris Defendants’ concern that the *Toomey* plaintiffs will circumvent the
27 PSLRA’s discovery stay is unfounded. The *Toomey* plaintiffs concede that the Court’s
28 consolidation order effectively stayed the *Toomey* action pending resolution of *In re Ripple*. *See*

1 *Toomey* Pl.'s Resp. at 3, ECF No. 151. Consequently, no party has proposed seeking discovery
2 from the Foris Defendants.

3 The Court's orders were clear. The *Toomey* action is effectively stayed pending resolution
4 of *In re Ripple*. For the reasons above, that should not change.

5 Dated: October 25, 2021

By: /s/ P. Ryan Burningham
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